

FACT SHEET: HHS and Treasury Issue Additional Guidance on 1332 Waivers

Date

2015-12-11

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On December 11, 2015, the Department of Health and Human Services and the Department of the Treasury posted guidance in the Federal Register for states interested in seeking a State Innovation Waiver under section 1332 of the Affordable Care Act. The guidance provides states with flexibility to pursue innovative waiver proposals while preserving the important protections of the Affordable Care Act, consistent with the statutory language. The guidance explains how the Secretaries will evaluate waiver applications, so that states have the information they need as they consider a waiver application. The Departments welcome comments on all aspects of the guidance and look forward to continuing to work with states and other stakeholders.

State Innovation Waivers allow states to receive federal funding to implement alternative models of health care coverage that provide high quality, affordable coverage to their residents. In order for a State Innovation Waiver to be approved, a state's alternative model must provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver; provide coverage to a comparable number of residents as would be provided absent a waiver; and not increase the federal deficit.

In 2012, the Departments published [regulations](#) (published at 77 FR 11700) that set forth the process for states to submit applications and describe what an application from a state must contain. These waivers may take effect as early as January 1, 2017.

HIGHLIGHTS

- **Coverage:** To meet the coverage requirement, a comparable number of state residents must be forecast to have coverage under the waiver as would have coverage absent the waiver. The impact on all state residents is considered, regardless of the type of coverage they would have absent the waiver. The assessment of whether a proposal meets the coverage requirement also takes into account the effects on vulnerable residents, including low-income individuals, elderly individuals, and those with serious health issues or who have a greater risk of developing serious health issues.
- **Affordability:** To meet the affordability requirement, health care coverage under the waiver must be forecast to be as affordable overall for state residents as coverage absent the waiver. Affordability refers to state residents' ability to pay for health care and may generally be measured by comparing residents' net out-of-pocket spending for health coverage and services (i.e. premiums, deductibles, co-pays, and co-insurance) to their incomes. The impact on all state residents is considered, regardless of the type of coverage they would have absent the waiver. The assessment of whether a proposal meets the affordability requirement also takes into account the effects on vulnerable residents, including low-income individuals, elderly individuals, and those with serious health issues or who have a greater risk of developing serious health issues.

- **Comprehensiveness:** To meet the comprehensiveness requirement, health care coverage under the waiver must be forecast to be at least as comprehensive overall for residents of the state as coverage absent the waiver. Comprehensiveness refers to the scope of benefits provided by the coverage as measured by the extent to which coverage meets the requirements for essential health benefits (EHBs) as defined in section 1302(b) of the Affordable Care Act, or Medicaid and/or CHIP standards as appropriate. The impact on all state residents is considered, regardless of the type of coverage they would have absent the waiver.

A waiver must not decrease the number of individuals with coverage that satisfies the requirements of EHB, the number of individuals with coverage of any one category of EHB, or the number of individuals with coverage that includes services authorized under the state's Medicaid and/or CHIP programs.

The assessment of whether a proposal meets the comprehensiveness requirement also takes into account the effects on vulnerable residents, including low-income individuals, elderly individuals, and those with serious health issues or who have a greater risk of developing serious health issues.

- **Deficit Neutrality:** Under the deficit neutrality requirement, the projected federal spending net of federal revenues under the waiver must be equal to or lower than projected federal spending net of federal revenues in the absence of the waiver. The estimated effect on federal revenue includes all changes in income, payroll, or excise tax revenue, as well as any other forms of revenue (including user fees), that would result from the proposed waiver. The effect on federal spending includes all changes in Health Insurance Marketplace financial assistance and other direct spending, such as changes in Medicaid spending that result from the changes made through the State Innovation Waiver. Projected federal spending under the waiver also includes all administrative costs to the federal government associated with the waiver.
- **Impact of Other Program Changes:** The assessment of whether a State Innovation Waiver proposal satisfies the statutory criteria set forth in section 1332 takes into consideration the impact of changes to Affordable Care Act provisions made by a proposed State Innovation Waiver. The assessment does not consider the impact of policy changes that are contingent on further state action, such as state legislation that is proposed but not yet enacted. It also does not include the impact of changes contingent on other federal determinations, including approval of federal waivers pursuant to statutory provisions other than section 1332 (e.g., section 1115 Medicaid or CHIP demonstrations). In addition, savings accrued under either proposed or current section 1115 Medicaid or CHIP demonstrations are not factored into the assessment of whether a proposed waiver meets the deficit neutrality requirement.
- **Funding Available to States:** The amount of federal funding provided to states to implement their waiver is the Secretaries' annual estimate of the federal cost (including outlays and forgone revenue) for Marketplace financial assistance provided pursuant to the Affordable Care Act that would be claimed by participants in the Marketplace in the state in the absence of the waiver, but will not be claimed as a result of the waiver. The amount is calculated annually.
- **Public Input:** The notice clarifies that the minimum length of public notice and comment periods for waiver applications is 30 days.

The Departments welcome comments on this guidance and will consider issuing additional guidance in the future if additional clarifications are necessary.

States may submit State Innovation Waiver applications to stateinnovationwaivers@cms.hhs.gov.

The guidance is available at <http://federalregister.gov/a/2015-31563> starting December 16, 2015.

For more information, please visit: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2015-31563.pdf>.

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